

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE,
1200 Pennsylvania Avenue NW
Washington, DC 20460

Defendant.

Case No. 18-2844

COMPLAINT

1. Plaintiff American Oversight brings this action against the Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of the FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency

from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant Department of Justice (DOJ) is an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1) headquartered in Washington, DC. DOJ has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

Email Communications FOIA

7. On June 20, 2018, American Oversight submitted a FOIA request to DOJ seeking access to the following records:

All email communications with any of the following individuals/organizations, including messages where custodians or outside individuals/organizations were carbon copied or blind carbon copied. This request includes all prior messages (whether incoming or outgoing) reflected in any responsive emails and any attachments.

- a. Federation for American Immigration Reform (including any emails sent to or received from an address ending in @fairus.org)
- b. Immigration Reform Law Institute (including any emails sent to or received from an address ending in @irli.org)

- c. Center for Immigration Studies (including any emails sent to or received from an address ending in @cis.org)
- d. Numbers USA (including any emails sent to or received from an address ending in @numbersusa.com)
- e. The Remembrance Project (including any emails sent to or received from an address ending in @theremembranceproject.org)
- f. Heritage Foundation (including any emails sent to or received from an address ending in @heritage.org)
- g. Kris Kobach (including but not limited to emails sent or received from kkobach@gmail.com, kris@kriskobach.com, or any emails he sent from an address ending in @ks.gov)
- h. Hans von Spakovsky (including but not limited to emails sent or received from hans.vonspakovsky@heritage.org)
- i. Jason Richwine (including but not limited to emails sent to or received from Jason.richwine@gmail.com)
- j. Jesicca Vaughan (including but not limited to emails sent to or received from jmv@cis.org)
- k. Mark Krikorian (including but not limited to emails sent to or received from msk@cis.org)
- l. Steven Camerota (including but not limited to emails sent to or received from sac@cis.org)
- m. Dan Stein (including but not limited to emails sent to or received from dstein@fairus.org)
- n. Lori Wood (including but not limited to emails sent to or received from lwood@fairus.org)
- o. Bob Dane (including but not limited to emails sent to or received from bdane@fairus.org)
- p. RJ Hauman (including but not limited to emails sent to or received from rjhauman@fairus.org)
- q. Heather Ham-Warren (including but not limited to emails sent to or received from hham@fairus.org)
- r. Robert Najmulski (including but not limited to emails sent to or received from rnajmulski@fairus.org)
- s. Roy Beck
- t. Rosemary Jenks
- u. Dale Wilcox (including but not limited to emails sent to or received from dwilcox@irli.org)
- v. Sarah Rehberg (including but not limited to emails sent to or received from sreberg@irli.org)
- w. Maria Espinoza (including but not limited to emails sent to or received from maria@theremembranceproject.org)

The search for responsive records can be limited to the following custodians:

- a. Jeff Sessions (OAG);
- b. Peggi Hanarhan (OAG);
- c. Matthew Whitaker (OAG);
- d. Rachael Tucker (OAG);
- e. Jody Hunt (OAG, OLP, and current office, if different); and
- f. Beth Williams (OLP).

The request sought all responsive records from January 20, 2017, to the date of the search.

8. DOJ assigned the request tracking number DOJ-2018-006173.
9. On July 19, 2018 DOJ responded to the request indicating that due to “unusual circumstances” the DOJ needed to extend the time limit to respond.

Email Communications and Search Terms FOIA

10. On October 18, 2018, American Oversight submitted a FOIA request to DOJ seeking access to the following records:

For the custodians identified below, all email communications with any of the following individuals/organizations, including messages where custodians or outside individuals/organizations were carbon copied (cc) or blind carbon copied (bcc). This request include all prior messages (whether incoming or outgoing) reflected in any responsive emails and any attachments to any responsive emails.

- a. Federation for American Immigration Reform (including any emails sent to or received from an address ending in @fairus.org)
- b. Immigration Reform Law Institute (including any emails sent to or received from an address ending in @irli.org)
- c. Center for Immigration Studies (including any emails sent to or received from an address ending in @cis.org)
- d. Numbers USA (including any emails sent to or received from an address ending in @numbersusa.com)
- e. The Remembrance Project (including any emails sent to or received from an address ending in @theremembranceproject.org)
- f. Heritage Foundation (including any emails sent to or received from an address ending in @heritage.org)
- g. Kris Kobach (including but not limited to emails sent or received from kkobach@gmail.com, kris@kriskobach.com, or any emails he sent from an address ending in @ks.gov)

- h. Hans von Spakovsky (including but not limited to emails sent or received from hans.vonspakovsky@heritage.org)
- i. Jason Richwine (including but not limited to emails sent to or received from Jason.richwine@gmail.com)
- j. Jessica Vaughan (including but not limited to emails sent to or received from jmv@cis.org)
- k. Mark Krikorian (including but not limited to emails sent to or received from msk@cis.org)
- l. Steven Camerota (including but not limited to emails sent to or received from sac@cis.org)
- m. Dan Stein (including but not limited to emails sent to or received from dstein@fairus.org)
- n. Lori Wood (including but not limited to emails sent to or received from lwood@fairus.org)
- o. Bob Dane (including but not limited to emails sent to or received from bdane@fairus.org)
- p. RJ Hauman (including but not limited to emails sent to or received from rjhauman@fairus.org)
- q. Heather Ham-Warren (including but not limited to emails sent to or received from hham@fairus.org)
- r. Robert Najmulski (including but not limited to emails sent to or received from rnajmulski@fairus.org)
- s. Roy Beck
- t. Rosemary Jenks
- u. Dale Wilcox (including but not limited to emails sent to or received from dwilcox@irli.org)
- v. Sarah Rehberg (including but not limited to emails sent to or received from sreberg@irli.org)
- w. Maria Espinoza (including but not limited to emails sent to or received from maria@theremembranceproject.org)

All email communications containing any of the following terms:

- a. “American Academy of Pediatrics”
- b. AAP
- c. Merkley
- d. “Prosecution initiative”

All email communications that contain any of the terms in Column A and any of the terms in Column B:

Column A	Column B
a. Separat*	<ul style="list-style-type: none"> b. Famil* c. Parent* d. Guardian* e. FMUA

All email communications that contain any of the terms in Column C and any of the terms in Column D:

Column A	Column B
a. ACLU	f. Separat*
b. “zero tolerance”	g. Deter*
c. Asylum	h. Famil*
d. “credible fear”	i. Parent*
e. 1158	j. Kid*
	k. Child*
	l. Mother*
	m. Father*
	n. Guardian*
	o. UAC*
	p. UC*
	q. FMUA

Please note that American Oversight is using the asterisk (*) to designate the standard use of “wildcards” in the search for responsive records. For example, a search for “separat*” would return all of the following: separate, separates, separated, separation, etc.

The search for responsive records may be limited to the following custodians:

- a. Gene Hamilton
- b. David Wetmore

The request sought all responsive records from January 20, 2017, to the date of the search.

- 11. DOJ assigned the request tracking number DOJ-2019-000790.

Exhaustion of Administrative Remedies

- 12. As of the date of this Complaint, Defendant has failed to (a) notify American Oversight of any determination regarding American Oversight’s FOIA requests, including the full scope of any responsive records the agency intends to produce or withhold and the reasons for any withholdings; or (b) produce all of the requested records or demonstrate that the requested records are lawfully exempt from production.

13. Through Defendant's failure to make determinations as to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

14. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

15. American Oversight properly requested records within the possession, custody, and control of Defendant.

16. Defendant is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

17. Defendant has failed to promptly and adequately review agency records for the purpose of locating those records which are responsive to American Oversight's FOIA requests.

18. Defendant's failure to conduct adequate searches for responsive records violates FOIA.

19. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to conduct adequate searches for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Responsive Records

20. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

21. American Oversight properly requested records within the possession, custody, and control of Defendant.

22. Defendant is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

23. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

24. Defendant is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

25. Defendant's failure to provide all non-exempt responsive records violates FOIA.

26. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;

- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: December 4, 2018

Respectfully submitted,

/s/ Joseph F. Yenouskas

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